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EXTRAORDINARY

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PART II—Section 2

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इस भाग में मिल पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate paging is given to this Part in order that it may be filed
as a separate compilation

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 4th March, 1993:—

BILL No. XV OF 1993

A Bill to provide for the regulation of the multimodal transportation of goods, from any place in India to a place outside India, on the basis of a multimodal transport contract and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Multimodal Transportation of Goods Act, 1993.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 16th day of October, 1992.

2. In this Act, unless the context otherwise requires,—

(a) “carrier” means a person who is engaged in the business of transporting for hire goods by road, rail, inland waterways or sea;

Short
title,
extent
and com-
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ment.

Defini-
tions.

(b) "competent authority" means any person or authority authorised by the Central Government, by notification in the Official Gazette, to perform the functions of the competent authority under this Act;

(c) "consignee" means the person named as consignee in the multimodal transport contract;

(d) "consignment" means the goods entrusted to a multimodal transport operator for multimodal transportation;

(e) "consignor" means the person, named in the multimodal transport contract as consignor, by whom or on whose behalf the goods covered by such contract are entrusted to a multimodal transport operator for multimodal transportation;

(f) "delivery" means,—

(i) in the case of a negotiable multimodal transport document, delivering of the consignment to, or placing the consignment at the disposal of, the consignee or any other person entitled to receive it;

(ii) in the case of a non-negotiable multimodal transport document, delivering of the consignment to, or placing the consignment at the disposal of, the consignee or any person authorised by the consignee to accept delivery of the consignment on his behalf;

(g) "endorsee" means the person in whose favour an endorsement is made, and in the case of successive endorsement, the person in whose favour the last endorsement is made;

(h) "endorsement" means the signing by the consignee or the endorsee after adding a direction on a negotiable multimodal transport document to pass the property in the goods mentioned in such document to a specified person;

(i) "goods" includes—

(I) containers, pallets or similar articles of transport used to consolidate goods; and

(II) animals;

(j) "mode of transport" means carriage of goods by road, rail, inland waterways or sea;

(k) "multimodal transportation" means carriage of goods by two or more modes of transport from the place of acceptance of the goods in India to a place of delivery of the goods outside India;

(l) "multimodal transport contract" means a contract entered into by the consignor and the multimodal transport operator for multimodal transportation;

(m) "multimodal transport operator" means any person who—

(i) concludes a multimodal transport contract on his own behalf or through another person acting on his behalf;

(ii) acts as principal, and not as an agent either of the consignor or of the carrier participating in the multimodal transportation, and who assumes responsibility for the performance of the said contract; and

(iii) is registered under sub-section (3) of section 4;

(n) "negotiable multimodal transport document" means a multimodal transport document which is—

(i) made out to order to bearer; or

(ii) made out to order and is transferable by endorsement; or

(iii) made out to bearer and is transferable without endorsement;

(o) "non-negotiable multimodal transport document" means a multimodal transport document which indicates only one named consignee;

(p) "prescribed" means prescribed by rules made under this Act;

(q) "registration" means registration of multimodal transport operator under sub-section (3) of section 4.

CHAPTER II

REGULATION OF MULTIMODAL TRANSPORTATION

3. No person shall carry on or commence the business of multimodal transportation unless he is registered under this Act:

No person to carry on business without registration.

Provided that a person carrying on the business of multimodal transportation immediately before the commencement of this Act, may continue to do so for a period of three months from such commencement; and if he has made an application for registration within the said period, till the disposal of such application.

4. (1) Any person may apply for registration to the competent authority to carry on or commence the business of multimodal transportation.

Registration for multimodal transportation.

(2) An application under sub-section (1) shall be made in such form as may be prescribed and shall be accompanied by a fee of ten thousand rupees.

(3) On receipt of the application, the competent authority shall satisfy that the applicant fulfils the following conditions, namely:—

(a) (i) that the applicant is a shipping company or a company engaged in the business of freight forwarding in India or abroad with a minimum annual turnover of fifty lakh rupees during the immediate preceding financial year or an average annual turnover of fifty lakh rupees during the preceding three financial years as certified by a chartered accountant within the meaning of the Chartered Accountants Act 1949;

(ii) that if the applicant is a company other than a company specified in sub-clause (i), the subscribed share capital of such company is not less than fifty lakh rupees;

(b) that the applicant has offices or agents or representatives in not less than two other countries,

and on being so satisfied, register the applicant as a multimodal transport operator and grant a certificate to it to carry on or commence the business of multimodal transportation:

Provided that the competent authority may, for reasons to be recorded in writing, refuse to grant registration if it is satisfied that the applicant does not fulfil the said conditions.

(4) A certificate granted under sub-section (3) shall be valid for a period of one year and may be renewed from time to time for a further period of one year at a time.

(5) An application for renewal shall be made in such form as may be prescribed and shall be accompanied by a fee of two thousand rupees.

Cancel-
lation of
registra-
tion.

5. The competent authority may, if it is satisfied at any time after registration that—

(a) any statement in, or in relation to, any application under sub-section (2) of section 4 or its renewal under sub-section (5) of that section, is incorrect or false in any material particular; or

(b) any of the provisions of this Act or the rules made thereunder has been contravened by the multimodal transport operator; or

(c) the multimodal transport operator has not entered into any multimodal transport contract during the preceding two years after his registration,

cancel by order the certificate of registration:

Provided that no such registration shall be cancelled unless the multimodal transport operator has been given a reasonable opportunity of showing cause against the proposed action.

Appeal.

6. (1) Any person aggrieved by an order made by the competent authority under section 5 may prefer an appeal to the Central Government within such period as may be prescribed.

(2) No appeal shall be admitted if it is preferred after the expiry of the prescribed period:

Provided that an appeal may be admitted after the expiry of the prescribed period if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

(3) Every appeal made under this section shall be made in such form and on payment of such fees as may be prescribed and shall be accompanied by a copy of the order appealed against.

(4) On receipt of any such appeal, the Central Government shall, after giving the parties a reasonable opportunity of being heard and after making such inquiry as it deems proper, make such order as it thinks fit.

CHAPTER III

MULTIMODAL TRANSPORT DOCUMENT

7. (1) Where the consignor and the multimodal transport operator have entered into a contract for the multimodal transportation and the multimodal transport operator has taken charge of the goods, he shall, at the option of the consignor, issue a negotiable or non-negotiable multimodal transport document.

Issue of multimodal transport document.

(2) The multimodal transport document shall be signed by the multimodal transport operator or by a person duly authorised by him.

8. (1) Every consignee named in the negotiable or non-negotiable multimodal transport document and every endorsee of such document, as the case may be, to whom the property in the goods mentioned therein shall pass, upon or by reason of such consignment or endorsement, shall have all the rights and liabilities of the consignor.

Multimodal transport document to be regarded as document of title.

(2) Nothing contained in sub-section (1) shall prejudice or affect the right of the multimodal transport operator to claim freight from the consignor or enforce any liability of the consignee or endorsee by reason of his being such consignee or endorsee.

9. The multimodal transport document shall contain the following particulars, namely:—

Contents of multimodal transport document.

(a) the general nature of the goods, the leading marks necessary for identification of the goods, the character of the goods (including dangerous goods), number of packages or units and the gross weight and quantity of the goods;

(b) apparent condition of the goods;

(c) the name and principal place of business of the multimodal transport operator;

(d) the name of the consignor;

(e) the name of the consignee, if specified by the consignor;

(f) the place and date of taking charge of the goods by the multimodal transport operator;

(g) the place of delivery of the goods;

(h) the date or the period of delivery of the goods at the place of delivery;

(i) whether it is negotiable or non-negotiable;

(j) the place and date of its issue;

(k) freight payable by the consignor or the consignee, as the case may be;

(l) the signature of the multimodal transport operator or of a person duly authorised by him;

(m) the intended journey route, modes of transport and places of transshipment, if known at the time of its issue;

(n) terms of shipment and a statement that the document has been issued subject to and in accordance with this Act; and

(o) any other particular which the parties may agree to insert in the document, if any such particular is not inconsistent with any law for the time being in force.

Reserva-
tion in
the multi-
modal
transport
document.

10. (1) Where the multimodal transport operator or a person acting on his behalf knows, or has reasonable grounds to suspect, that the particulars furnished by the consignor in the multimodal transport document do not accurately represent the goods actually taken in charge, or if he has no reasonable means of checking such particulars, the multimodal transport operator or a person acting on his behalf shall insert in the multimodal transport document a reservation specifying the inaccuracies, if any, the grounds of suspicion or the absence of reasonable means of checking the particulars.

(2) Where the multimodal transport operator or a person acting on his behalf fails to insert the reservation in the multimodal transport document relating to the apparent condition of the goods, he shall be deemed to have accepted the goods in apparent good condition.

Eviden-
tiary
effect of
the multi-
modal
transport
docu-
ment.

11. Save as provided in section 10,—

(a) the multimodal transport document shall be *prima facie* evidence of the fact the multimodal transport operator has taken charge of the goods as described in the document; and

(b) no proof to the contrary by the multimodal transport operator shall be admissible if the multimodal transport document is issued in negotiable form and has been transmitted to the consignee or transferred by the consignee to a third party, if the consignee or the third party has acted in good faith relying on the description of the goods in the document.

Responsi-
bility of
the
consignor.

12. (1) The consignor shall be deemed to have guaranteed to the multimodal transport operator the adequacy and accuracy, at the time the multimodal transport operator takes charge of the goods, of the particulars referred to in clauses (a) and (b) of section 9 as furnished by the consignor for insertion in the multimodal transport document.

(2) The consignor shall indemnify the multimodal transport operator against loss resulting from inadequacy or inaccuracy of the particulars referred to in sub-section (1).

(3) The right of the multimodal transport operator under sub-section (2) shall in no way limit his liability under the multimodal transport contract to any person other than the consignor.

CHAPTER IV

RESPONSIBILITIES AND LIABILITIES OF THE MULTIMODAL TRANSPORT OPERATOR

Basis of
liability
of multi-
modal
transport
operator.

13. (1) The multimodal transport operator shall be liable for loss resulting from—

(a) any loss of, or damage to, the consignment;

(b) delay in delivery of the consignment and any consequential loss or damage arising from such delay.

where such loss, damage or delay in delivery took place while the consignment was in his charge:

Provided that the multimodal transport operator shall not be liable if he proves that no fault or neglect on his part or that of his servants or agents had caused or contributed to such loss, damage or delay in delivery:

Provided further that the multimodal transport operator shall not be liable for loss or damage arising out of delay in delivery unless the consignor had made a declaration of interest in timely delivery which has been accepted by the multimodal transport operator.

Explanation.—For the purposes of this sub-section, “delay in delivery” shall be deemed to occur when the consignment has not been delivered within the time expressly agreed upon or, in the absence of such agreement, within a reasonable time required by a diligent multimodal transport operator, having regard to the circumstances of the case, to effect the delivery of the consignment.

(2) If the consignment has not been delivered within ninety consecutive days following the date of delivery expressly agreed upon or the reasonable time referred to in the *Explanation* to sub-section (1), the claimant may treat the consignment as lost.

14. (1) When a multimodal transport operator becomes liable for any loss of, or damage to, any consignment, the nature and value whereof have not been declared by the consignor before such consignment has been taken in charge by the multimodal transport operator and the stage of transport at which such loss or damage occurred is not known, then the liability of the multimodal transport operator to pay compensation shall not exceed two Special Drawing Rights per kilogram of the gross weight of the consignment lost or damaged or 666.67 Special Drawing Rights per package or unit lost or damaged, whichever is higher.

Explanation.—For the purposes of this sub-section, where a container, pallet or similar article of transport is loaded with more than one package or unit, the packages or units enumerated in the multimodal transport document, as packed in such container, pallet or similar article of transport shall be deemed as packages or units.

(2) Notwithstanding anything contained in sub-section (1), if the multimodal transportation does not, according to the multimodal transport contract, include carriage of goods by sea or by inland waterways, the liability of the multimodal transport operator shall be limited to an amount not exceeding 8.33 Special Drawing Rights per kilogram of the gross weight of the goods lost or damaged.

15. Where a multimodal transport operator becomes liable for any loss of, or damage to, any consignment, the nature and value whereof have not been declared by the consignor before such consignment has been taken in charge by the multimodal transport operator and the stage of transport at which such loss or damage occurred is known, then the limit of the liability of the multimodal transport operator for such loss or damage shall be determined in accordance with the provisions of the relevant law applicable in relation to the mode of transport during the course of which

Limits of liability when the nature and value of the consignment have not been declared and stage of transport where loss or damage occurred is not known.

Limits of liability when the nature and value of the consignment have not

been declared and stage of transport where loss or damage occurred is known.

Liability of the multi-modal transport operator in case of delay in delivery of goods under certain circumstances.

Assessment of compensation.

Loss of right of multi-modal transport operator to limit liability.

Limit of liability of multi-modal transport operator for total loss of goods.

Notice of loss of or damage to goods.

the loss or damage occurred and any stipulation in the multimodal transport contract to the contrary shall be void and unenforceable.

16. Where delay in delivery of the consignment occurs under any of the circumstances mentioned in the *Explanation* to sub-section (1) of section 13, or any consequential loss or damage arises from such delay, then the liability of the multimodal transport operator shall be limited to the freight payable for the consignment so delayed.

17. (1) Assessment of compensation for loss of, or damage to, the consignment shall be made with reference to the value of such consignment at the place where, and the time at which, such consignment is delivered to the consignee or at the place and time when, in accordance with the multimodal transport contract, it should have been delivered.

(2) The value of the consignment shall be determined according to the current commodity exchange price, or, if there is no such price, according to the current market price, or, if the current market price is not ascertainable, with reference to the normal value of a consignment of the same kind and quantity.

18. The multimodal transport operator shall not be entitled to the benefit of limitation of liability under any of the provisions of this Chapter if it is proved that the loss, damage or delay in delivery of consignment resulted from an act or omission of the multimodal transport operator with intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

19. The multimodal transport operator shall not, in any case, be liable for an amount greater than the liability for total loss of goods for which a person will be entitled to make a claim against him under the provisions of this Act.

20. (1) The delivery of the consignment to the consignee by the multimodal transport operator shall be treated as prima facie evidence of delivery of the goods as described in the multimodal transport document unless notice of the general nature of loss of, or damage to, the goods is given, in writing, by the consignee to the multimodal transport operator at the time of handing over of the goods to the consignee.

(2) Where the loss or damage is not apparent the provisions of sub-section (1) shall apply unless notice in writing is given by the consignee of the loss of, or damage to, the goods within six consecutive days after the day when the goods were handed over to the consignee.

CHAPTER V

MISCELLANEOUS

21. (1) Where the consignor hands over the prescribed dangerous goods to a multimodal transport operator or any person acting on behalf of such operator, the consignor shall inform him of the nature of the dangerous goods and, if necessary, the precautions to be taken while transporting such goods.

Special provision for dangerous goods.

(2) Where the consignor fails to inform the multimodal transport operator or the other person acting on behalf of such operator of the nature of the dangerous goods and such operator or person does not otherwise have knowledge of the dangerous goods—

(a) the consignor shall be liable to the multimodal transport operator or the other person acting on behalf of such operator for all loss resulting from the multimodal transportation of such goods; and

(b) the goods may at any time be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation.

22. (1) The multimodal transport operator who has not been paid the amount of consideration stipulated in the multimodal transport contract shall have a lien on the consignment and on the documents in his possession.

Right of multimodal transport operator to have lien on goods and documents.

(2) Notwithstanding anything contained in sections 13, 16 and 18, the period during which the goods are in possession of the multimodal transport operator in exercise of his right of lien referred to in sub-section (1) shall not be included for the purposes of calculating the time of delay under any of those sections.

23. Notwithstanding anything contained in any other provision of this Act, it shall be lawful for the parties to the multimodal transport contract to include in the multimodal transport document any provision relating to general average.

General average.

Explanation. For the purposes of this section, "general average" means loss, damage or expense reasonably incurred in order to avert danger to property in common peril and in the common interest involved in the multimodal transportation.

24. The multimodal transport operator shall not be liable under any of the provisions of this Act unless action against him is brought within nine months of—

Limitation on action.

(a) the date of delivery of the goods, or

(b) the date when the goods should have been delivered, or

(c) the date on, and from which the party entitled to receive delivery of the goods has the right to treat the goods as lost under sub-section (2) of section 13.

Jurisdiction for instituting action.

25. Any party to the multimodal transport contract may institute an action in a court which is competent and within the jurisdiction of which is situated one of the following places, namely:—

(a) the principal place of business, or, in the absence thereof, the habitual residence, of the defendant; or

(b) the place where the multimodal transport contract was made, provided that the defendant has a place of business, branch or agency at such place; or

(c) the place of taking charge of the goods for multimodal transportation or the place of delivery thereof; or

(d) any other place specified in the multimodal transport contract and evidenced in the multimodal transport document.

Arbitration.

26. (1) The parties to a multimodal transport contract may provide therein that any dispute which may arise in relation to multimodal transportation under the provisions of this Act shall be referred to arbitration.

(2) The arbitration proceeding may be instituted at such place or in accordance with such procedure as may be specified in the multimodal transport document.

Delegation of power

27. The Central Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act, except the power under section 30, shall, in such circumstances and subject to such conditions, if any, as may be specified therein, be exercisable also by such officer or authority as may be specified in the notification.

Multimodal transport contract to be made in accordance with this Act.

28. No person registered as a multimodal transport operator shall enter into any contract for multimodal transportation except in accordance with the provisions of this Act and any contract, to the extent it is inconsistent with the said provisions, shall be void and unenforceable.

Act to override other enactments.

29. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Power to make rules

30. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such rules may provide for all or any of the following matters, namely:—

(a) the forms in which applications shall be made under section 4;

(b) the period within which appeal shall be preferred under sub-section (1) of section 6;

(c) the form in which an appeal shall be preferred under section 6 and the amount of fee payable in respect of such appeal;

(d) dangerous goods for the purpose of section 21;

(e) any other matter which is to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

31. On and from the date of the commencement of this Act, the enactments specified in Parts I, II and III of the Schedule shall be amended in the manner specified therein.

Amend-
ment of
certain
enact-
ments.

Ord. 6
of 1993.

32. (1) The Multimodal Transportation of Goods Ordinance, 1993 is hereby repealed.

Repeal
and
savings.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE

(See section 31)

AMENDMENT OF CERTAIN ENACTMENTS

PART I

Amendment of the Carriers Act, 1865

(3 of 1865)

In the Carriers Act, 1865,—

(a) in section 2, in the definition relating to “common carrier”, after the words “engaged in the business of”, the words “transporting property under multimodal transport document or of” shall be inserted;

(b) in section 6, 7 and 8, for the words “property delivered”, the words and brackets “property (including container, pallet or similar article of transport used to consolidate goods) delivered” shall, respectively, be substituted;

(c) in sections 9 and 10, for the words “goods entrusted”, the words and brackets “goods (including containers, pallets or similar article of transport used to consolidate goods) entrusted” shall, respectively, be substituted.

PART II

Amendment of the Indian Carriage of Goods by Sea Act, 1925

(26 of 1925).

In the Indian Carriage of Goods by Sea Act, 1925,—

(a) in the Preamble, after the second paragraph, the following paragraph shall be inserted, namely:—

“AND WHEREAS the said rules were amended by the Protocol signed at Brussels on 23rd February, 1968 and by the Protocol signed at Brussels on 21st December, 1979;”;

(b) in section 7, in sub-section (1), for the words and figures “sections 331 and 352”, the words, figures and letters “section 331 and Part XA” shall be substituted;

(c) in the Schedule,—

(i) in Article I, in clause (c), after the word “merchandises”, the words “containers, pallets or similar article of transport used to consolidate goods if supplied by the shipper,” shall be inserted;

(ii) in Article III,—

(1) in paragraph 4, the following shall be added at the end, namely:—

“However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.”;

(2) in paragraph 6, in the third sub-paragraph, the following shall be added at the end, namely:—

“This period may, however, be extended if the parties so agree after the cause of action has arisen:

Provided that a suit may be brought after the expiry of the period of one year referred to in this sub-paragraph within a further period of not more than three months as allowed by the court.”;

(iii) in Article IV, in paragraph 5,—

(1) for the words and figures “amount exceeding 100 l. per package or unit”, the words and figures “amount exceeding 666.67 Special Drawing Rights per package or unit or two Special Drawing Rights per kilogram of gross weight of the goods lost or damaged, whichever is higher” shall be substituted;

(2) after the first sub-paragraph, the following sub-paragraphs shall be inserted, namely:—

“Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading and as packed in such article of transport shall be deemed to be the number such packages or units for the purposes of this paragraph as of packages or units for the purposes of this paragraph as far as these packages or units are concerned.

Neither the carrier nor the ship shall be entitled to the benefit of limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

Where the nature or value of the goods has been knowingly mis-stated by the shipper in the bill of lading, the liability of the carrier or ship shall not exceed the value so stated.”.

PART III

Amendment of the Sale of Goods Act, 1930

(3 of 1930)

In the Sale of Goods Act, 1930, in section 2, in clause (4), after the words “railway receipt,”, the words “multimodal transport document,” shall be inserted.

STATEMENT OF OBJECTS AND REASONS

International transportation of general cargo has undergone important structural changes due to advances in the transport technology including the advent of containers. Containers are increasingly being used for transportation of goods from one country to another, using more than one mode of transport and more than one carrier. Such unbroken multimodal transportation of goods is also being done under a single transport document covering all the modes of transport and the multimodal transport operator remains liable and responsible to the cargo owner. Multimodal transportation of goods has become a standard practice in the trade between developed countries and the same is now gradually spreading to developing countries also.

2. India's overseas general cargo trade has also started moving in containers. The containerised cargo is also moving from the hinterland, particularly from the inland container depots set up in the country, to the ports. In order to facilitate containerised trade, container handling facilities in major Indian ports, container railway flat wagons, inland container depots and container freight stations have been and are being developed. The quantum of India's general cargo trade moving in containers is thus gradually increasing. The Government of India had set up a Working Group to examine the prevalent situation and to recommend a law on multimodal transportation of goods for India which should clearly determine the liabilities and responsibilities of multimodal transport operators for loss of, or damage to, the goods. This Group formulated proposals for the said legislation which were substantially based on the rules framed by the International Chamber of Commerce. The Group also took note of the provisions of the United Nations Convention on Multimodal Transport of Goods, 1980. The Group also recommended certain amendments to the Carriers Act, 1865, the Indian Carriage of Goods by Sea Act, 1925 and the Sale of Goods Act, 1930.

3. In the context of various measures taken by the Government of India to liberalise controls, simplify procedures, facilitate smooth flow of international trade and promotion of exports, it became necessary to immediately regulate multimodal transportation of goods by law with a view to reducing and eliminating interruption in the continuous movement of goods from their origin to the ultimate destination as also reducing cost and delays and improving the quality of transport services. The President accordingly promulgated the Multimodal Transportation of Goods Ordinance, 1992 on the 16th October, 1992 to provide a legal regime to govern, on a uniform basis, the liabilities and responsibilities of a multimodal transport operator who can provide services under a single document to shippers engaged in international trade.

4. The Multimodal Transportation of Goods Bill, 1992 for replacing the said Ordinance was, therefore, introduced in the Council of States on 30-11-92. The Bill was passed by the Council of States on 22-12-1992. However, the said Bill could not be considered and passed by the House of the People during the Winter Session of 1992. Since the process of multimodal transportation of goods had set in and registration of Multimodal Transport Operators under

the said Ordinance had also started, it became necessary to re-promulgate the said Ordinance. The President accordingly promulgated the Multimodal Transportation of Goods Ordinance, 1993 (Ord. of 1993) on 2nd January, 1993.

5. The Bill seeks to replace the said Ordinance.

JAGDISH TYTLER

Notes on Clauses

Clause 2 seeks to define the various expressions used in the Bill such as multimodal transport operator, multimodal transport contract, multimodal transportation, consignor, consignee, delivery, etc.

Clause 3 provides that no person shall carry on or commence the business of multimodal transportation unless he is registered under this law. It also provides that a person carrying on the business of multimodal transportation before the commencement of this law may continue to do so for a period of three months from such commencement and if he has made an application for registration within that period, then, till the disposal of such application.

Clause 4 provides for registration of a person as multimodal transporter. The application for registration shall be made to the competent authority and shall be accompanied by a fee of rupees ten thousand. The applicant shall be a shipping company or a company engaged in the business of freight forwarding in India or abroad with a minimum annual turnover of rupees fifty lakhs during the immediate preceding financial year or an average annual turnover of that amount during the preceding three years or a company, other than the aforesaid company, whose subscribed share capital is not less than rupees fifty lakhs. A certificate of registration shall be valid for a period of one year and may be renewed from time to time for a further period not exceeding one year at a time on payment of a fee of rupee two thousand.

Clause 5 provides for the cancellation of registration where the competent authority is satisfied that the statement made in the application is incorrect or false or if any provision of the Act or rule made thereunder has been contravened or if during the preceding two years no multimodal transport document has been issued by the multimodal transport operator. It is also provided that no such registration shall be cancelled unless the multimodal transport operator has been given an opportunity of showing cause against the proposed action.

Clause 6 provides for right to appeal against the order of competent authority. Such appeal is to be preferred before the Central Government.

Clause 7 provides for the issue of multimodal transport document. Such document may, at the option of the consignor, be either in negotiable form or non-negotiable form.

Clause 8 provides that a multimodal transport document issued by the multimodal transport operator shall be regarded as document of title and the consignee or, as the case may be, the endorsee shall have all the rights and liabilities of the consignor.

Clause 9 enumerates the details which a multimodal transport document shall contain, such as, description of the goods, conditions of the goods, details of the consignor and consignee, particulars of the multimodal transport operator, place and date of delivery of the goods, freight payable, etc.

Clause 10 seeks to make provision for protection of multimodal transport operator. It gives him a right to make reservation in this multimodal transport document where he has no reasonable means of checking the particulars of the goods as furnished by the consignor or he suspects that the said particulars do not represent the goods. It also provides that where the multimodal transport operator or any person acting on his behalf fails to insert such reservation in the multimodal transport document, he shall be deemed to have accepted the goods in apparent good condition.

Clause 11 provides that the multimodal transport document shall be *prima facie* evidence of taking charge of the goods, as described in the document, by the multimodal transport operator. It further provides that where such document is issued in negotiable form and has been transmitted to the consignee or transferred by the consignee to the third party, any proof to the contrary by the multimodal transport operator shall not be admissible. This clause is necessary to protect the interest of the consignee and third party.

Clause 12 lays down the responsibilities of the consignor. It provides that the consignor is deemed to have guaranteed the particulars of the goods including their general nature, leading marks for identifying goods, number of packages or units, weight, etc. It further provides that the consignor shall indemnify the multimodal transport operator against loss resulting from inaccuracy or inadequacy of the particulars given by him.

Clause 13 lays down the basis of liability of the multimodal transport operator in the case of loss of, or damage to the consignment or delay in delivery of consignment while the consignment was in his charge. However, the multimodal transport operator is exonerated of his liability if he proves that no fault or neglect of his, his servants or agents has caused or contributed to the loss, damage or delay in delivery. The expression "delay in delivery" is deemed to occur when the consignment has not been delivered within the time expressly agreed upon, or in the absence of such agreement, within a reasonable time required by a diligent multimodal transport operator having regard to the circumstances of the case, to effect the delivery of the consignment. Sub-clause (2) also provides that if the consignment has not been delivered within the ninety consecutive days following date of delivery agreed upon or the said reasonable time, the claimant can treat the consignment as lost.

Clause 14 provides for the limits of liability of the multimodal transport operator in cases where the nature and value of the consignment has not been declared by the consignor and the loss of, or damage to, the consignment occurs at a stage of transport not known to the parties. In such cases, the compensation shall not exceed two Special Drawing Rights per kilogram of the gross weight of the consignment so/lost or damaged or 666.67 Special Drawing Rights per package or unit so lost or damaged, whichever is higher. It is further provided that whether the multimodal transport contract does not include carriage of goods by sea or by inland waterways, the said liability shall be limited to an amount not exceeding 8.33 Special Drawing Rights per kilogram of the gross weight of the goods so lost or damaged.

Clause 15 provides for the limit of liability of the multimodal transport operator where the nature and value of the consignment has not been declared by the consignor and the stage of transport where the loss or damage occurred is known. The liability of the multimodal transport operator shall be determined with reference to the provisions of such law as is applicable in relation to the mode of transport during the course of which the loss or damage occurred and any stipulation in the multimodal transport contract to the contrary shall be void and unenforceable.

Clause 16 provides that the liability of multimodal transport operator in case of delay in delivery of goods under the circumstances mentioned in the *Explanation* to sub-clause (1) of clause 13 shall be limited to the freight payable for the consignment in regard to which delay has occurred.

Clause 17 provides the method for the assessment of compensation with reference to the value of the goods. Under sub-clause (1) of this clause it is provided that the basis for assessment of compensation shall be made with reference to the value of consignment at the place where, and the time at which, the consignment is delivered or it should have been delivered. Sub-clause (2) of this clause provides that the basis for the determination of value shall be current commodities exchange price or in absence of that the current market price or where such price is not ascertainable, with reference to the normal value of a consignment of the same kind and quantity.

Clause 18 provides that the multimodal transport operator shall not be entitled to the benefit of limiting his liability under clauses 13 to 16 if it is proved that the loss damage or delay in delivery of consignment resulted from an act or omission of the multimodal transport operator which was done intentionally or recklessly and with knowledge that such loss or damage or delay would probably result.

Clause 19 limits the liability of the multimodal transport operator to an amount which shall not exceed the amount for total loss of goods.

Clause 20 provides that the notice of loss of, or damage to, the goods is to be given by the consignee to the multimodal transport operator at the time of handing over of the goods to the consignee. If such notice is not given, the delivery of the consignment shall be taken to be the evidence of the delivery of the consignment as described in the multimodal transport document. Sub-clause (2) provides that where the loss or damage is not apparent the notice as mentioned aforesaid may be given at any time within a period of six consecutive days after the day when the goods were handed over to the consignee.

Clause 21 provides that the consignor shall inform the multimodal transport operator or his agent about the specific nature of the dangerous goods and will also indicate the precautions which are to be taken in handling such goods. Sub-clause (2) makes it clear that where the consignor fails to inform the multimodal transport operator about the nature of dangerous goods and the multimodal transport operator does not have knowledge about the dangerous goods, the consignor shall be liable for a loss resulting from the transportation of such goods. Further the multimodal transport operator in such case has the right to unload, destroy or make the goods harmless and for any of these acts he shall not be liable to pay any compensation.

Clause 22 provides that in case the multimodal transport operator has not been paid the consideration specified in the contract, he shall be entitled to exercise his right of lien over the goods and also on the documents which are in his possession. Sub-clause (2) makes it clear that the period during which the right of lien has been exercised by the multimodal transport operator shall not be considered in calculating delay in delivery of goods on the part of the multimodal transport operator.

Clause 23 allows the parties to the multimodal transport contract to include in the multimodal transport document a provision relating to general

average. General average has been defined as loss, damage or expenses reasonably incurred in order to avert danger to property in the common interest of all the parties to the contract.

Clause 24 provides a time-limit for legal action which is to be brought within nine months of the date of delivery of the goods or the date when the goods should have been delivered or the date on and from which the party entitled to receive delivery of the goods has the right to treat the goods as lost under sub-clause (2) of clause 13.

Clause 25 enumerates the places where any party to the multimodal transport contract may institute a suit in a court which is competent. Such places may be, the principal place of business, or, in absence of that, the habitual residence, of the defendant, or the place where the multimodal transport contract was made and the defendant has a place of business branch or agency at such place, or the place of taking charge of the goods for multimodal transportation or the place of delivery of goods or any other place specified in the multimodal transport document.

Clause 26 enables the parties to the multimodal transport contractor to refer their dispute to arbitration. The place where the arbitration proceedings are to be instituted will be the place which is specified in the multimodal transport document.

Clause 27 provides for the delegation of powers exercisable by the Central Government (except the power to make rules) to such officers or authorities and subject to such conditions as may be specified by that Government in the notification.

Clause 28 provides that a person who is registered as multimodal transport operator shall not enter into any contract for multimodal transportation except in accordance with the provisions of this law and where any contract has been entered into in contravention of this law such contract to the extent it is consistent with shall be void and unenforceable.

Clause 29 gives an overriding effect to the provisions of this law over any other existing law applicable with regard to transportation of goods and any instrument which has effect by virtue of any law, other than this law.

Clause 30 enable the Central Government to make rules for carrying out the provisions of this law.

Clause 31 read with the Schedule seeks to amend certain enactments, namely, the Carriers Act, 1865, the Indian Carriage of Goods by Sea Act, 1925 and the Sale of Goods Act, 1930.

In the Carriers Act, the definition of "common carrier" has been amended to include the business of "transporting property under multimodal transport document". In case of other amendments, it has been made clear that property or goods also includes containers, pallets or similar article of transport used to consolidate goods.

In the Indian Carriage of Goods by Sea Act, 1925, the amendments are based on the protocols signed at Brussels in 1968 and 1979. These amendments mainly relate to (i) amending the definition of "goods" to include containers, pallets or similar articles of transport used to consolidate goods, if supplied by

the shipper; (ii) estopping the carriers from producing any evidence to the effect that the goods mentioned in the bill of lading have not been received as described in the bill where the bill of lading has been transferred to a third party in good faith; (iii) extending the period of one year within which a suit is to be filled by the parties. The said period of one year can be further extended by the parties with the permission of the court to another period of three months; (iv) increasing the amount of compensation and fixing the amount in terms of Special Drawing Rights per package or unit or per kilogram of gross weight of the goods lost or damaged on the lines of clause 14 of the Bill; (v) providing the manner of calculating the packages and units which have been placed in a container, pallet or similar article of transport for the purposes of determining compensation. The number of packages and units shall be the same as are referred to in the bill of lading. However, the aforesaid rule of evidence will not apply in case of the damage to goods which have taken place because of act or omission of the carrier which is done with intent to cause damage or recklessly and with knowledge that the damage will result.

In the Sale of Goods Act, 1930, the definition of "document of title to goods", as given in clause (4) of section 2, is being amended to include a reference to multimodal transport document.

Clause 32 provides for repeal of the Multimodal Transportation of Goods Ordinance, 1993 and saving of action taken under that Ordinance.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 30 of the Bill empowers the Central Government to make rules for carrying out the provisions of the Bill. Such rules may, among other things, provide for any of the following matters, namely:—

- (a) the forms in which applications shall be made under clause 4;
- (b) the period within which appeal shall be preferred under clause 6;
- (c) the form in which appeal shall be preferred under clause 6 and the amount of fee payable in respect of such appeal;
- (d) prescribing dangerous goods for the purpose of clause 21.

2. The matters in respect of which rules may be made are matters of procedure and detail and it is not possible to incorporate the same in the Bill. The delegation of legislative power is, therefore, of a normal character.

SUDARSHAN AGARWAL,
Secretary-General.

